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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,521	01/11/2006	Shai Vaingast	0518/74605/JPW/DYK	3673

23432 7590 06/26/2009
COOPER & DUNHAM, LLP
30 Rockefeller Plaza
20th Floor
NEW YORK, NY 10112

EXAMINER

ALTER, ALYSSA MARGO

ART UNIT	PAPER NUMBER
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3762

MAIL DATE	DELIVERY MODE
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06/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/538,521	Applicant(s) VAINGAST ET AL.	
	Examiner Alyssa M. Alter	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/10/05, 2/21/06 & 1/12/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Nedungadi et al. (US 5,722,997). Nedungadi et al. discloses measuring of tissue impedance, specifically cardiac impedance, by employing a charging circuit “arranged to charge the capacitor and the capacitor is adapted to produce a pulse when the capacitor is discharged. A means is provided for electrically transmitting the pulse through at least a portion of the patient’s body. A circuit develops signals representative of the voltages across the capacitor when charged and when said capacitor has been discharged to produce a pulse”(col. 2, lines 30-34).

As to claim 2, 11, 13 and 25, Nedungadi et al. discloses in claim 1, “a stimulator arranged to stimulate a patient's heart; a charging circuit and a first capacitor, said charging circuit arranged to charge said first capacitor and said first capacitor adapted to produce a pulse when said first capacitor is discharged; means for electrically transmitting said pulse through at least a portion of the patient's body; a first impedance measuring circuit for developing a first signal representative of the voltage across said first capacitor when charged and a second signal representative of the voltage across said first capacitor when said first capacitor has been discharged to produce said pulse,

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said first impedance measuring circuit periodically measuring the impedance, and a second impedance measuring circuit, means for detecting an impedance imbalance, and means for activating said second impedance measuring circuit when said impedance imbalance is detected” (col. 6, claim 1). Furthermore, the examiner considers the alternative impedance circuit to be the second impedance measurement circuits that is then sequentially employed after the first impedance measuring circuit.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571)272-4939. The examiner can normally be reached on M-F 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Angela D Sykes/

/Alyssa M Alter/

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Supervisory Patent Examiner, Art Unit 3762

Examiner
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